IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL REVISION NO.1775 of 2007

DATE OF DECISION: NOVEMBER 22, 2007

Mahinder Kaur and another

.....Petitioners

VERSUS

State of Haryana

....Respondent

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

PRESENT: Mr. Krishan Singh, Advocate,
for the petitioners.

Mr. Yashwinder Singh, AAG, Haryana,
for the State.

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RANJIT SINGH, J.

The petitioners stand convicted for an offence under Section 498A IPC and sentenced to suffer simple imprisonment for two years. The allegations made against the petitioners are on account of matrimonial discord between the petitioner and the complainant (wife of petitioner No.2). Matrimonial differences between the husband and wife led to filing of FIR by the complainant-wife against the husband and petitioner No.1, her mother-in-law on 1.11.1999. In addition, allegations were also made against Piara Singh, father-in-law of the complainant. After investigation, the petitioners alongwith said Piara Singh were

put to trial. At 24.7.2006, Chief Judicial Magistrate acquitted Piara Singh, father-in-law of the complainant. He, however, found the petitioners guilty of an offence under Section 498A IPC but acquitted them of a charge under Section 406 IPC. The petitioners were sentenced to undergo simple imprisonment for two years in addition to a fine of Rs.1,000/-. The petitioners impugned the said verdict by filing an appeal before the Additional Sessions Judge, Kaithal. They remained unsuccessful and their conviction for an offence under Section 498A IPC has been maintained and so too the sentence awarded. The petitioners, as such, have filed the present revision against the order of Chief Judicial Magistrate as well as Additional Sessions Judge, Kaithal. When this revision came up for hearing on 24.9.2007, the same was dismissed on merits. A notice to the State, however, was issued for considering the prayer of the petitioners for showing leniency in the sentence awarded. Accordingly, notice was issued only in regard to quantum of sentence awarded to the petitioners.

While adjourning the case, sentence awarded to petitioner No.1 was ordered to be suspended on the ground that she was 75 years old and was stated to be sick and admitted in hospital.

Learned counsel appearing for the petitioners has drawn my attention to the order passed by the Appellate Court to urge that the prayer made by the petitioners for their release on probation has not been properly considered and decided. Learned counsel would highlight the fact that one of the petitioners is 75 years of age. The counsel would emphasise that incident is of the year 1995 and the petitioners had faced protracted trial for nearly 10 years, upto the

date of their conviction on 24.7.2006. The allegation made against the petitioners under Section 406 IPC was found not established and they were acquitted. In fact, some indication can be had from the order passed by the Courts in regard to the fact that the case set-up by the complainant against the petitioners may not require a serious view. It is rare to find a case where the courts have gone to award a simple imprisonment instead of rigorous imprisonment. There may be something weighing with the Courts in this regard to order simple imprisonment rather than awarding rigorous imprisonment. The submission of the counsel that petitioner No.1 is 75 years old and sick also requires consideration. These facts obviously have not been appreciated by the appellate Court while rejecting the prayer of the petitioners for their release on probation. Counsel for the petitioners would also say that petitioner No.2 is an employee of Food Corporation of India and his service would also get effected in case the present sentence is allowed to stand against him. The Hon'ble Supreme Court in the case of ***Chandreshwar Sharma Vs. State of Bihar,*** JT 2000(2) SC 36 has held that reading of Sections 361 and 360 of the Code together would indicate that in any case where the courts have dealt with an accused under Section 360 of the Code, and yet does not want to grant the benefit of said provision then it shall record in its judgment the specific reasons for not doing so. This apparently has not been done by the Appellate Court and thus the court has over looked the provisions of Sections 360 and 361 Cr.P.C. It can be said that the Appellate Court did not perform its mandatory duty. It is not disputed before me that the petitioners are the first offenders. Petitioner No.1 is also of advanced age. Any

harsh treatment to her, as such, may not be warranted.

Taking these special facts into consideration, the petitioners are directed to be released on probation for a good conduct instead of sentencing them. They will appear before the Chief Judicial Magistrate, Kaithal, and enter into bond with one surety each to appear and receive the sentence when called upon during the period of two years for the purpose in question. The bond for this period shall be executed before the Chief Judicial Magistrate, Kaithal, within one month of this order. Petitioner No.2 is in custody. He would appear before Chief Judicial Magistrate, Kaithal, to furnish the requisite bonds within one month of his release.

The petition is accordingly disposed of.

November 22,2007 **(RANJIT SINGH)**
khurmi **JUDGE**